

Message Text

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PAGE 01 LUXEMB 00742 171545Z
ACTION SNM-05

INFO OCT-01 EUR-12 ISO-00 L-03 DEAE-00 PPTE-00 CA-01

/022 W

-----058901 180337Z /64

R 141325Z JUL 78
FM AMEMBASSY LUXEMBOURG
TO SECSTATE WASHDC 6515

UNCLAS LUXEMBOURG 0742

E.O. 11652: NA
TAGS: SNAR, LU
SUBJ: NARCOTICS LAWS

REF: STATE 170187

EMBASSY RESPONSE KEYED TO QUESTION LISTED REFTEL.

1. POSSESSION:

A. THERE IS NO DIFFERENTIATION MADE IN THE LAW FOR POSSESSION OF VARIOUS NARCOTICS.
B. NO QUALIFYING AMOUNT MEED BE IN POSSESSION FOR OPERATION OF THE OFFENSE.
C. PENALTIES FOR POSSESSION ARE WITHIN THE DISCRETION OF LAW ENFORCEMENT AND JUDICIAL AGENCIES AND ARE GENERALLY LESS SEVERE THAN FOR OTHER NARCOTICS OFFENSES. A DISTINCTION IS MADE BETWEEN USERS AND SUSPECTED TRAFFICKERS. FIRST OFFENSE CASES FOR "SIMPLE POSSESSION" OF SMALL QUANTITIES OF NARCOTICS ARE USUALLY NOT PUNISHED BY IMPRISONMENT. SUCH OFFENDERS ARE REFERRED TO A COURT SUPERVISED PSYCHOMEDICAL TREATMENT PROGRAM ADMINISTERED BY A COMMITTEE OF PUBLIC OFFICIALS, LAWYERS, DOCTORS, PSYCHIATRISTS AND SOCIAL WORKERS. SUSPECTED TRAFFICKERS ARE WITHOUT EXCEPTION DEALT WITH THROUGH THE JUDICIAL POCESS AND, IF PROVED GUILTY, JAILED. THE AMOUNT OF NARCOTICS WHICH DISTINGUISH A "USER" FROM A "TRAFFICKER" IS LEFT UNCLASSIFIED

UNCLASSIFIED

PAGE 02 LUXEMB 00742 171545Z

TO THE DISCRETION OF THE ENFORCEMENT AND JUDICIAL AUTHORITIES.

2. TRAFFICKING:

A. THE LAW CONSOLIDATES ALL CONTROLLED SUBSTANCES INTO A GENERAL TRAFFICKING OFFENSE.
B. AND C. THE LAW IN LUXEMBOURG STATES THAT ANYONE

"WHO HAS, BY ILLICIT MEANS, IMPORTED, EXPORTED, MANUFACTURED, SOLD, OFFERED FOR SALE, OR PUT INTO CIRCULATION" ANY ILLEGAL SUBSTANCES IS SUBJECT TO IMPRISONMENT AND FINE. A SENTENCE OF AT LEAST ONE YEAR IS MANDATORY. A TRAFFICKER MAY BE SENTENCED TO UP TO 15 YEARS IN PRISON AND MAY BE SUBJECT TO A FINE OF 5000 TO 1,000,000 FLUX. (US\$1 EQ 32 FLUX). THOSE PERSONS PUBLICLY ADVOCATING ILLEGAL DRUG USE OR HAVING USED DRUGS BEFORE ANY THIRD PARTIES ARE SUBJECT TO THE SAME PUNISHMENT. MANDATORY SENTENCES OF 15 TO 20 YEARS AT HARD LABOR ARE REQUIRED IN THOSE CASES WHERE ILLEGAL DRUG ACTIVITIES HAVE RESULTED IN AN INDIVIDUAL'S DEATH (LIFE AT HARD LABOR IS REQUIRED IF THE DEATH IS THAT OF A MINOR). PAROLE AND CONDITIONAL LIBERTY PROVISIONS ARE COVERED UNDER PARAGRAPH 5E BELOW. ONCE AGAIN, THE AMOUNT OF NARCOTICS DISTINGUISHING USERS (SIMPLE POSSESSION) FROM TRAFFICKERS IS LEFT TO THE DISCRETION OF THE ENFORCEMENT AND JUDICIAL AUTHORITIES. NOTE THAT THOSE PERSONS IN POSSESSION OF SMALL AMOUNTS OF NARCOTICS APPREHENDED AT LUXEMBOURG'S BORDER ARE ALWAYS CONSIDERED TRAFFICKERS EVEN THOUGH THEY MAY BE IMPORTING DRUGS FOR THEIR OWN USE. THE ONE YEAR SENTENCE SHOULD, THEREFORE, BE MANDATORY, BUT IN PRACTICE, SUCH FIRST OFFENDERS (USERS) ARE USUALLY GIVEN A SUSPENDED SENTENCE AND UNDERGO DETOXIFICATION TREATMENT.

UNCLASSIFIED

UNCLASSIFIED

PAGE 03 LUXEMB 00742 171545Z

D. THE CRIMINAL PENALTIES FOR CONSPIRACY TO TRAFFIC, IMPORT OR EXPORT NARCOTICS ARE THE SAME AS OUTLINED ABOVE FOR THE ACTUAL CRIME OF TRAFFICKING, IMPORT OR EXPORT OF ILLEGAL DRUGS. IT IS, HOWEVER, EXTREMELY DIFFICULT TO PROVE CONSPIRACY, AND AS YET, NO SUCH CASES HAVE BEEN PROSECUTED IN LUXEMBOURG.

3. CULTIVATION, PRODUCTION, ELABROATION:

A.B. C. THE CULTIVATION, PRODUCTION, AND ELABORATION OF ANY ILLEGAL NARCOTICS ARE PROHIBITED BY LAW AND SUBJECT TO CRIMINAL PROSECUTION. THE PENALTIES FOR SUCH ACTIVITIES ARE THE SAME AS FOR TRAFFICKING OFFENSES AS OUTLINED IN 2C.

4. FINANCIAL:

A. FINANCIAL SUPPORT FOR CULTIVATION, ELABORATION OR TRAFFICKING IN NARCOTICS IS NOT DIRECTLY COVERED BY LAW BUT WOULD FALL UNDER CONSPIRACY TO TRAFFIC AS COVERED IN 2D. ALTHOUGH LUXEMBOURG HAS EVOLVED INTO A MAJOR INTERNATIONAL FINANCIAL CENTER WITH OVER 90 FOREIGN BANKS, LUXEMBOURG POLICE OFFICIALS BELIEVE THAT NO BANKER HERE WOULD KNOWINGLY HANDLE AN ACCOUNT

BASED ON NARCOTICS REVENUE. IF THE GOI BANKING COMMISSION SUSPECTED AN INDIVIDUAL'S OR COMPANY'S FINANCIAL ACTIVITIES AS CRIMINAL, THEY WOULD REPORT IT TO THE GOI ATTORNEY'S OFFICE FOR APPROPRIATE ACTION. THE GOI BANKING COMMISSIONER WOULD COOPERATE FULLY IN A SPECIFIC INVESTIGATION OF FINANCIAL IRREGULARITIES FLOWING FROM ILLICIT DRUG TRAFFIC. TO DATE, NO SUCH CASES HAVE COME TO LIGHT.

B. THERE ARE NO CURRENCY CONTROL LAWS ON THE EXPORT OR IMPORT OF CURRENCY IN LUXEMBOURG AND NO RESTRICTIONS ON FOREIGN BANK ACCOUNTS.

5. CRIMINAL PROCEDURE:

A. BY LAW, THE POLICE MAY HOLD A SUSPECT FOR 24 HOURS
UNCLASSIFIED

UNCLASSIFIED

PAGE 04 LUXEMB 00742 171545Z

DURING WHICH TIME, THE SUSPECT IS NOT ALLOWED LEGAL OR CONSULAR ACCESS. WITHIN 24 HOURS, THE SUSPECT MUST BE BROUGHT BEFORE A JUDGE (JUGE D'INSTRUCTION) AND CHARGED OR RELEASED. IF CHARGED, THE SUSPECT MAY CONSULT WITH A LAWYER AND SEE THE US CONSUL. THE LAWYER MAY APPEAL TO ANOTHER BODY, THE CONSEIL DE MISE EN ACCUSATION, WHICH DECIDES IF THE SUSPECT IS TO BE BOUND OVER FOR TRIAL. ALTHOUGH NOT REQUIRED TO NOTIFY THE US EMBASSY, LUXEMBOURG POLICE HAVE GENERALLY NOTIFIED THE EMBASSY OF THE ARREST OF ANY US CITIZEN DURING THE INITIAL 24-HOUR DETENTION PERIOD.

B. THE LENGTH OF THE PRE-TRIAL DETENTION VARIES FROM FOUR MONTHS TO ONE AND A HALF YEARS. RELEASE ON BAIL IS RARE, ESPECIALLY IN DRUG CASES. THE AMOUNT OF TIME SPENT IN PRE-TRIAL DETENTION IS DEDUCTED FROM ANY SUBSEQUENT SENTENCE. CASES IN WHICH CONVICTION IS LESS CERTAIN TEND TO BE SCHEDULED AS QUICKLY AS POSSIBLE.

C. THE TRIAL IS QUICK, USUALLY LASTING A MAXIMUM OF THREE DAYS. THERE MAY BE DELAYS FROM FOUR MONTHS TO ONE AND A HALF YEARS IN SCHEDULING ANY REVIEW OR APPEAL HEARING WHICH, LIKE THE TRIAL, GENERALLY LAST ONLY THREE DAYS.

D. A PUBLIC DEFENDER IS AVAILABLE TO THE DEFENDANT AT NO COST. PRIVATE LAWYERS ARE ALSO AVAILABLE TO HANDLE NARCOTICS CASES. FEES VARY CONSIDERABLY DEPENDING ON THE COMPLEXITY OF THE CASE, A FEE OF 3000 TO 5000 FLUX. IS USUALLY CHARGED FOR THE BASIC COURT HEARING. APPEAL/REVIEW HEARINGS WOULD ADD 5000 TO 8000 FRANCS TO THE COST.

E. THE TRIAL JUDGE HAS THE DISCRETION TO GIVE A SUSPENDED OR REDUCED SENTENCE AT THE TIME OF SENTENCING. BY LAW, FIRST OFFENDERS ARE ELIGIBLE FOR UNCLASSIFIED

UNCLASSIFIED

PAGE 05 LUXEMB 00742 171545Z

PAROLE AFTER SERVING HALF OF THEIR SENTENCE. SECOND OFFENDERS MAY HAVE A PAROLE HEARING AFTER SERVING THREE-QUARTERS OF THEIR SENTENCE. HOWEVER IN PRACTICE, DRUG OFFENDERS HAVE A MORE DIFFICULT TIME SECURING A PAROLE AND USUALLY SERVE THEIR ENTIRE SENTENCE. CONDITIONAL LIBERTY, WORK PROGRAMS, ETC. MAY BE CONSIDERED AT ANY TIME.

F. EXPULSION FROM LUXEMBOURG IS COMMON FOR MINOR OFFENSES OR FOR POSSESSION OF SMALL AMOUNTS OF NARCOTICS WHEN THE OFFENDER IS A FOREIGNER (USUALLY FROM OUTSIDE THE COMMON MARKET) WITHOUT ANY TIES TO LUXEMBOURG (JOB OR RELATIVES). THOSE FOREIGNERS CONVICTED OF MORE SERIOUS OFFENSES ARE ALSO USUALLY DEPORTED UPON COMPLETION OF THEIR SENTENCE. LOWENSTEIN

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Message Attributes

Automatic Decaptoning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: NARCOTICS
Control Number: n/a
Copy: SINGLE
Draft Date: 14 jul 1978
Decapton Date: 01 jan 1960
Decapton Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 jan 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978LUXEMB00742
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780294-0016
Format: TEL
From: LUXEMBOURG
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780759/aaaabxyb.tel
Line Count: 189
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: d5ff9d73-c288-dd11-92da-001cc4696bcc
Office: ACTION SNM
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 78 STATE 170187
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 22 apr 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2005142
Secure: OPEN
Status: NATIVE
Subject: NARCOTICS LAWS
TAGS: SNAR, LU
To: STATE
Type: TE
vdkgvgwkey: odbc://SAS/SAS.dbo.SAS_Docs/d5ff9d73-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014